

CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 12/21/04

AGENDA ITEM 8

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of the Planning Commission Denial of Text Amendment Application No. PL-2004-0331 – Permit Animal Hospitals in the Central City – Commercial Subdistrict – Dharam P. Salwan (Appellant/Applicant)

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution finding that the project is categorically exempt from environmental review and denying the appeal.

BACKGROUND:

On October 21, 2004, the Planning Commission denied the application (6:0) to allow animal hospitals in the Central City – Commercial (CC-C) Subdistrict. Commissioners indicated that the use is not appropriate in the downtown, that animal hospitals are permitted in proximity to the downtown, and that others exist nearby.

The appellant, Dr. Dharam P. Salwan, was not present at the Planning Commission hearing and he is appealing the decision because he believes his request was not correctly represented to the Planning Commission. Although his text amendment application was made to permit an "animal hospital" in the CC-C Subdistrict, he indicates his intent is to operate a "pet clinic." However, the Zoning Ordinance contains a definition for "animal hospital" only and does not differentiate between veterinary "hospitals" and "clinics." Dr. Salwan indicated to staff that he did not receive notice of the Planning Commission hearing; records indicate that notice was mailed to him to two different addresses.

Dr. Salwan indicates that pet clinics treat animals on an outpatient basis without overnight care, whereas animal hospitals provide for overnight care. He suggests that pet clinics would generate pedestrian traffic and that patrons would visit local shops and restaurants while waiting for their pets. Dr. Salwan also suggested that staff look at the example of other area cities in locating veterinary services. Staff contacted the cities of Fremont, Union City and Oakland. Fremont allows "veterinary services" as primary uses in the centers of each community (Niles, Centerville *et al*); "veterinary services, including hospitals" are permitted by administrative use permit in the industrial districts. Union City allows "veterinary offices and small animal hospitals" by conditional use permit in its two primary commercial areas around Union Landing and Union Square (Decoto and Alvarado-Niles Roads). Oakland permits "animal care" by conditional use permit in nearly all of its commercial districts except historic districts. However, none of these cities define the terms used, or the range of services permitted. Staff also visited PetSmart at BayFair in San Leandro as it contains an in-house pet hospital, operated by Banfield. Banfield

offers a full range of veterinary services, including surgery. However, Banfield is located in a destination, big-box pet supply store that does not rely upon or interrupt foot traffic.

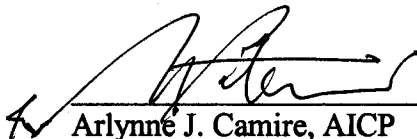
The uses that are permitted in the downtown are intended to serve and encourage pedestrian-oriented activity. The CC-C Subdistrict should contain a mix of businesses and other activities which will enhance the economic vitality of the downtown area. Permitted activities include retail, office, service, lodging, entertainment, education, and multi-family residential uses. The General Plan "*recognize[s] the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas.*" In staff's opinion, an animal hospital or pet clinic could interrupt the continuous retail frontages important to the downtown. They are destination facilities with little or no positive spillover effect to surrounding businesses. Traditionally, pet clinics and animal hospitals have incidental retail sales only that use very little floor area. Furthermore, there are other nearby locations where animal hospitals can better serve the City's residential areas.

Dr. Salwan has indicated that he would be willing to operate a pet clinic in conjunction with a pet supply store and grooming facility. Retail pet supply stores and grooming are currently permitted as primary uses in the CC-C Subdistrict. Dr. Salwan has indicated that approximately one-fourth of the gross floor area would be used for the clinic.

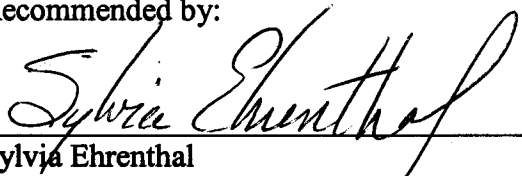
Should the City Council wish to consider permitting pet clinics as an ancillary use to a permitted retail pet supply store or grooming facility in the downtown, staff recommends that the matter be returned to the Planning Commission for further consideration, including a definition for "pet clinic," a determination of the type of permit required, and the impact of such use in the downtown.

During the Planning Commission hearing, one member of the public spoke in support of the text amendment.

Prepared by:


Arlynne J. Camire, AICP
Associate Planner

Recommended by:


Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:


Jesús Armas, City Manager

Attachments: Exhibit A. Zoning Map
Exhibit B. Appeal Letter, dated October 25, 2004
Exhibit C. Planning Commission Meeting Minutes and Staff Report, dated
October 21, 2004
Exhibit D. Findings for Denial
Draft Resolution

12/14/04

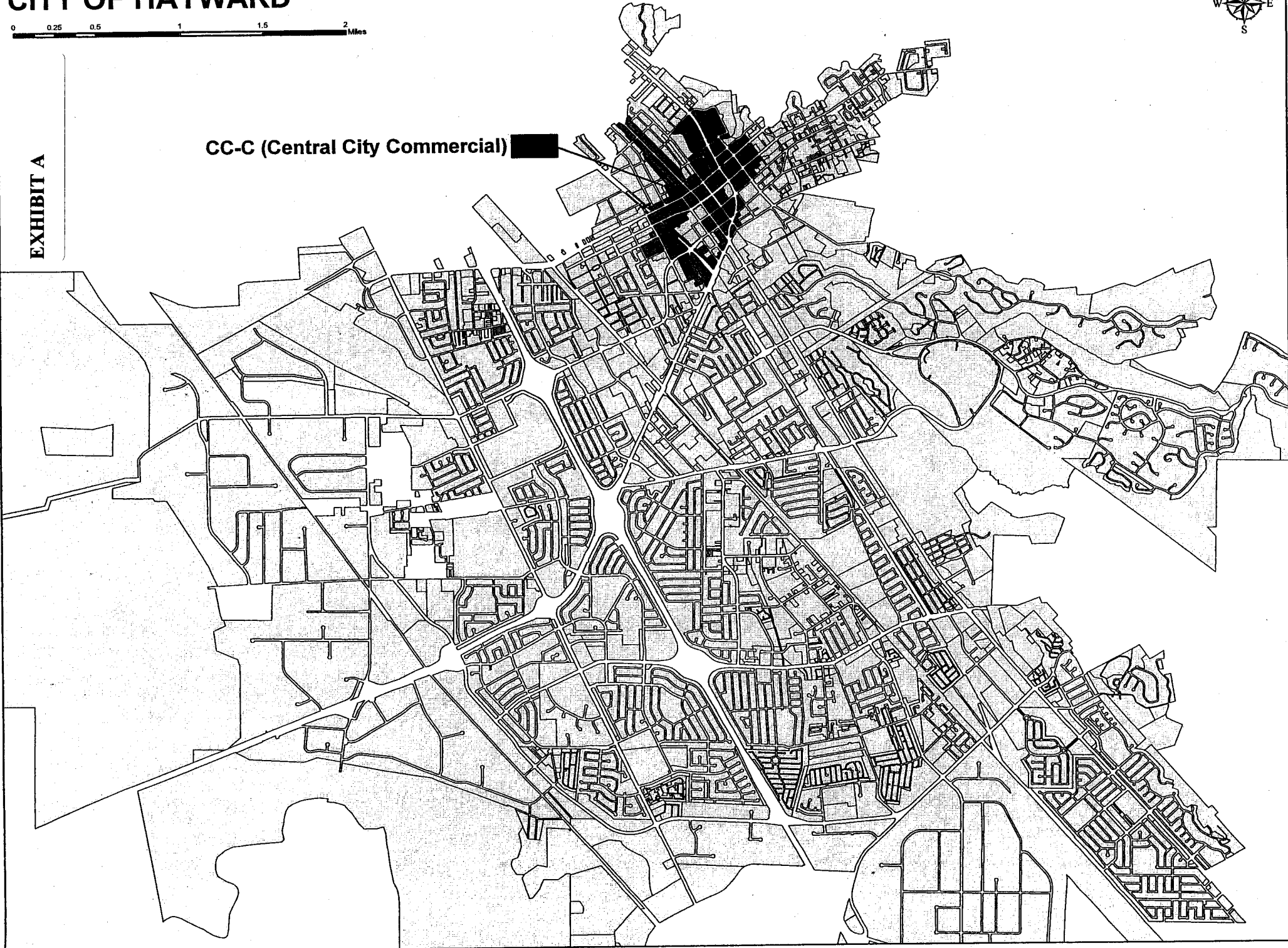
CITY OF HAYWARD

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EXHIBIT A

CC-C (Central City Commercial)



Dr. Dharam P. Salwan
1151 A Street, Suite 200
Hayward, CA 94541
510-886-8546

October 25, 2004

City Council
City of Hayward
777 B Street
Hayward, CA 94541-5007

Dear City Council Members:

I am submitting an appeal to the decision made by the Planning Commission of the City of Hayward denying change to the text amendment no. PI-2004-0331. I believe that the city failed to make an important distinction in my request for the change in text amendment. I did not request that an "animal hospital" be allowed as permitted use within the Central-City Commercial Subdistrict. I requested that a *pet clinic* be allowed as a permitted use along with grooming and retail pet supplies. A pet clinic is different from an animal hospital in that it serves to treat a multitude of clients who are seeking outpatient treatments. The pet clinic will supplement the retail business as well as grooming services provided at the location. The City already allows grooming and pet supply shops in the commercial district. The retail business will consist of sales of pet supplies, high quality pet foods, and other high quality pet products.

Some cities have distinguished between the two different uses. An animal hospital is generally for patrons who want to have their pet treated for a variety of illness and consists of hospitalization and other extensive procedures. A pet clinic by nature is intended for the mass public and generates a tremendous amount of foot traffic. This model is different from any current "animal hospital" in the area as it will feature a pet clinic, pet supply retail, and grooming. If the City of Hayward would just look at other cities such as Union City, Fremont, and Oakland, they will find many pet clinics in major shopping malls along with grocery stores, and restaurants. Pet clinics can be found in commercial centers all along the bay area from San Francisco, Oakland, Union City, Hayward, Fremont, and San Jose. Pet Care is a \$30 Billion Dollar Business and viewed by many in high esteem. Pet Clinics are not destination sites and do encourage foot traffic.

RECEIVED

NOV 01 2004

PLANNING DIVISION

Again, I believe conclusions made by the planning commission are based on a lack of distinction between our request of a pet clinic which is different from the City's current view of animal hospitals. This amendment change is not very drastic as the city already allows grooming salons and pet supplies stores. We disagree with the conclusion that an "animal hospital" or a "pet clinic" would "weaken the attractiveness of retail areas." One just needs to go outside of City of Hayward to see example of beautiful animal hospitals and pet clinics which are contributing to a vibrant downtown. Pets are no longer backyard animals that allowed to run around loose. In the past 20 years they have taken a much larger role in society as family members. Pets sleep with their owners and share their meals with them. As the baby boomer population ages, more and more people are getting pets. One third of American households have babies, while two thirds have pets! People want their pet clinic to be in central district where one can drop off their pet for some shots, pickup dog food, and then head over to the grocery store to do the shopping. The planning commission is shortsighted in its belief that the "proposed change would not promote the public health, safety, convenience, and general welfare of the residents of Hayward..." A pet clinic would promote public health in that good pet care results in good human care. Studies show that pet owners are healthier and have lower blood pressure and recover faster after surgeries compared to non-pet owners. Pet owners encourage the public to exercise more as they walk their dogs. A pet clinic is a safe place as it does not encourage the wrong kind of crowds as most patrons are middle to upper class, female, and 40+ age. A pet clinic, pet supply store, and grooming promote convenience because one can go the central district, drop off the pet for needed services, go to the grocery store for shopping, eat at a restaurant, and return to pickup the pet after all of that is done. All of our current facilities are very convenient because we are open weekends and evenings. Finally, the general welfare of the residents of City of Hayward will be improved because they will have greater access to pet care in areas where they work and shop. As previously stated, studies show that pet ownership does promote general welfare of any community.

We are confident that once our project is complete, you will be proud of the high quality of its appearance and will certainly be satisfied by the foot traffic generated. This project will certainly accomplish the City's image of making this a vibrant downtown. Any belief of a pet clinic not generating foot traffic or not enhancing the economic vitality of the downtown are ill-founded and a review of other pet clinics in other cities will prove this belief to be false. Our pet clinic and pet supply center will be a unique one in the City of Hayward and we will generate high revenues contributing to a large tax base. We share in the mission to make the City of Hayward a magnificent one!

Sincerely,


Dharam P. Salwan D.V.M.



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION**

EXHIBIT C

Council Chambers

Thursday, October 21, 2004, 7:30 p.m.

777 B Street, Hayward, CA 94541

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m., by Chair Sacks followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS: McKillop, Bogue, Thnay, Peixoto, and Zermefio

CHAIRPERSON: Sacks

Absent: COMMISSIONERS: None (One Vacancy)

Staff Members Present: Anderly, Camire, Conneely, Koonze, Pearson, Macias

General Public Present: Approximately 15

PUBLIC COMMENTS

There were no public comments.

PUBLIC HEARINGS

1. **Text Amendment Application No. PL-2004 – 0331 - Dharam Salwan (Applicant) -**
Request to Amend the Central City-Commercial Subdistrict Administrative Uses Within the Zoning Ordinance to Permit Animal Hospitals.

Staff report submitted by Associate Planner Camire, dated October 21, 2004, was filed.

Associate Planner Camire presented the staff report. It has been determined by staff that an animal hospital in the downtown area among other reasons, did not encourage pedestrian-oriented activity; rather it would generate vehicle trips with patrons driving to the facility. There are other zoning districts in the city where animal hospitals can better serve residential areas. She responded to questions from Commissioners.

Chair Sacks opened the public hearing at 7:37 p.m.

It was noted that neither the applicant nor a representative was present at this meeting.

Paige Bennett, volunteer for Fairmont and Hayward animal shelters, spoke in support of the text amendment. She noted that there are no animal hospitals in the proposed area and people who do not have cars and who own pets can not travel on public transportation with their animals; therefore they can not get the services they need to maintain healthy pets. She stated there are 7 animal hospitals in Hayward and 14 in Castro Valley, and pet owners in this Hayward area go to Castro

Valley because it is more convenient. Potential city revenues are being lost to other areas. If Mission Boulevard is widened, most of the animal hospitals in Hayward would be lost. She urged support for the text amendment.

In response to Chair Sacks' inquiry if Ms. Bennett knew of any other city that allows animal hospitals in the central city commercial area, Ms. Bennett stated that there is one in a shopping center in Union City, which is located about 3 blocks from their city hall.

Chair Sacks closed the public hearing at 7:42 p.m.

Commissioner Bogue stated that it was not appropriate to have this use in this area. The Commission recently approved an animal hospital on Foothill. He moved, seconded by Commissioner Zermefio, per staff recommendation to deny the text amendment.

Commissioners Thnay and McKillop stated they concurred with Commissioner Bogue and would support the motion.

Commissioner Bogue moved, seconded by Commissioner Zermefio, and unanimously carried, that the Planning Commission finds that the text amendment is statutorily exempt from the California Environmental Quality Act (CEQA) guidelines; and denies the proposed text amendment, subject to the staff report.

2. **Site Plan Review Application No. PL-2004-0489** – Installation of SolarPort at Southland Mall – Tom Young for Swearingen Systems Inc. (Applicant) / Southland Mall LLP (Owner) - The Project is Located on La Playa Drive Opposite Calaroga Avenue

Staff report submitted by Principal Planner Patenaude, dated October 21, 2004, was filed.

Due to the proximity of his residence to the proposed project Commissioner Bogue recused himself regarding the matter and he left the room.

Associate Planner Pearson presented the staff report. He responded to questions from Commissioners.

Chair Sacks opened the public hearing at 7:51 p.m.

Tom Young, the applicant, thanked staff for their work over the last several months. He highlighted some of the details of the project and stated that there have been discussions with mall staff who have expressed concern about the three-foot height of the proposed shrubbery, as someone hiding in the shrubbery would not be easily seen. He asked that the Commission consider a lower height requirement. He further asked that the call boxes be eliminated as there will be camera surveillance, which is sufficient for this area as shoppers do not usually park in this section due to the proximity of the stores. He responded to questions from the Commissioners.



CITY OF HAYWARD AGENDA REPORT

Meeting Date 10/21/04
Agenda Item 1

TO: Planning Commission

FROM: Arlynn J. Camire, AICP, Associate Planner

SUBJECT: **Text Amendment Application No. PL-2004 - 0331-Dharam Salwan (Applicant):** Request to Amend the Central City-Commercial Subdistrict Administrative Uses within the Zoning Ordinance to Permit Animal Hospitals.

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the text amendment is statutorily exempt from the California Environmental Quality Act (CEQA) guidelines; and
2. Deny the proposed text amendment, subject to the attached findings.

BACKGROUND

Downtown Hayward is a diverse, transit oriented neighborhood with housing, shopping, services, restaurants, entertainment, and cultural and civic activities. The uses that are permitted in the Central City-Commercial Subdistrict are a mix of transit- and pedestrian-oriented businesses and that promote street activity and enhance the economic vitality of the downtown area as well as serve downtown residents, employees and customers.

DISCUSSION

The applicant, Dr. Dahram Salwan, proposed an amendment to the Zoning Ordinance to allow animal hospitals as a permitted use within the Central-City Commercial Subdistrict. The purpose of the Central City-Commercial (CC-C) Subdistrict is to establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses. The uses that are permitted in the downtown are to serve and encourage pedestrian-oriented activity. An animal hospital would not promote pedestrian activity. It would be a destination use generating vehicle trips with patrons driving pets to the facility, and not necessarily with any positive spill over effect to surrounding businesses.

The General Plan's (Chapter 2, Land Use Policies and Strategies, Downtown Area) land use strategy is to "*Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas.*" In staff's opinion, an animal hospital is not conducive to pedestrian shopping,

would not contribute to the economic vitality of the downtown. Furthermore, there are other zoning districts in Hayward where animal hospitals can better serve residential areas.

ENVIRONMENTAL REVIEW:

The application request is statutorily exempt from the California Environmental Quality Act per Guidelines Section 15270(a), Projects Which Are Disapproved.


PUBLIC NOTICE:

On July 15, 2004, a Referral Notice of the proposed text amendment was sent to the Chamber of Commerce and the Downtown Hayward Business Improvements Advisory Board.

On October 1, 2004, a Notice of Public Hearing for the Planning Commission meeting was published in the local newspaper, The Daily Review. Staff did not receive any public response.


If the Planning Commission is inclined to recommend approval of animal hospitals in the Central City-Commercial Subdistrict, then staff should be directed to prepare the appropriate environmental documents and findings for approval.

Prepared by:



Arlynn J. Camire, AICP
Associate Planner

Recommended by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Zoning Map
- B. Text Amendment Findings for Denial

FINDINGS FOR DENIAL
TEXT AMENDMENT APPLICATION NO. PL-2004-0331
Dharam Salwan (Applicant)

- A. Denial of Text Amendment Application No. 2004-0331 is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15270(a); Projects Which are Disapproved.
- B. The proposed change would not promote the public health, safety, convenience, and general welfare of the residents of Hayward in that an animal hospital is a use that does not promote economic vitality of the downtown.
- C. The proposed text amendment is not in conformance with all applicable, officially adopted policies and plans in that the General Plan emphasizes uses in the downtown that are pedestrian friendly. Uses that do not encourage pedestrian traffic weaken the attractiveness of the retail area.
- D. That allowing animal hospitals in the Central City-Commercial Subdistrict will not be compatible with present and potential future uses in the Central City-Commercial Subdistrict and, further, would not have a beneficial economic effect since the use is not compatible with pedestrian oriented retail development.

DRAFT
HAYWARD CITY COUNCIL

RESOLUTION NO. 04-

Introduced by Council Member _____

me
12/8/04

RESOLUTION FINDING THE PROJECT CATEGORICALLY
EXEMPT AND DENYING TEXT AMENDMENT
APPLICATION NO. PL 2004-0331, TO PERMIT ANIMAL
HOSPITALS IN THE CENTRAL CITY-COMMERCIAL
SUBDISTRICT

WHEREAS, Text Amendment Application No. 2004-0331, concerns a request by Dharam P. Salwan (Applicant/Appellant) to permit animal hospitals in the Central City-Commercial Subdistrict; and

WHEREAS, an initial study and negative declaration have been prepared and processed in accordance with City and CEQA guidelines; and

WHEREAS, the Planning Commission, at its meeting of October 21, 2004, considered the matter and denied the application (6:0) to allow animal hospitals in the Central-City Commercial Subdistrict as an administrative use, indicating that it was not appropriate in the downtown and that an animal hospital has already been approved to be built on Foothill Boulevard, not far from the downtown and others are also nearby; and

WHEREAS, the City Council of the City of Hayward finds and determines as follows:

1. Denial of Text Amendment Application No. 2004-0331 is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15260(a); Projects Which are Disapproved.
2. The proposed change would not promote the public health, safety, convenience, and general welfare of the residents of Hayward in that an animal hospital is a use that does not promote economic vitality of the downtown.
3. The proposed text amendment is not in conformance with all applicable, officially adopted policies and plans in that the General Plan emphasizes uses in the downtown that are pedestrian friendly. Uses that do not encourage pedestrian traffic weaken the attractiveness of the retail area.
4. That allowing animal hospitals in the Central City-Commercial Subdistrict will not be compatible with present and potential future uses in the Central City-Commercial Subdistrict and, further, would not have a beneficial economic effect since the use is not compatible with pedestrian oriented retail development.

NOW THEREFORE BE IT RESOLVED, that the City Council hereby finds and determines that the project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) and that the Appeal of the Planning Commission's denial of Text Amendment No. PL 2004-0331 is hereby denied.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2004

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward